

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Revocation of the)	
License to Conduct Gambling Activities of:)	NO. CR 2011-00811
)	
David A. Falcon Jr.)	FINDINGS, CONCLUSIONS,
Lacey, Washington,)	DECISION, AND FINAL
)	ORDER IN DEFAULT
Licensee.)	

THE MATTER of the revocation of the license to conduct gambling activities of David A. Falcon Jr. having come before the Commission on September 8, 2011, the State being represented by Jerry Ackerman, Senior Counsel, Office of the Attorney General, the Commission makes the following Findings of Fact, Conclusions of Law, and issues the following Decision and Order:

FINDINGS OF FACT

I.

The Washington State Gambling Commission issued David A. Falcon Jr. the following:

License Number 68-26829, authorizing Card Room Employee activity, formerly at Macau Casino, Lakewood.

Certification Number 69-28976, authorizing Class III Employee activity, formerly at Snoqualmie Casino, North Bend. Mr. Falcon has not worked as a Class III Employee since December 8, 2010.

The Commission issued this license and certification, which expired on August 3, 2011, subject to Mr. Falcon's compliance with the Snoqualmie Tribal/State Compact, state gambling laws, and Commission rules.

II.

On July 15, 2011, Director Rick Day issued an Order of Summary Suspension to David A. Falcon Jr., by personal service. The Summary Suspension notified Mr. Falcon that failure to respond would result in the entry of a default order revoking his license. Mr. Falcon did not respond to the charges.

By not responding, David A. Falcon Jr. waived his right to a hearing on such charges and pursuant to RCW 34.05.440, this final order may be entered in default.

III.

SUMMARY:

On February 18, 2011, the licensee/certified employee, David A. Falcon Jr., was charged with Theft in the Second Degree, arising from the theft of over \$5,000 in \$500 chips from the Snoqualmie Casino while he was working at baccarat tables. On May 26, 2011, Mr. Falcon pled guilty to Attempted Theft in the Second Degree and placed on 12 months' probation. Additionally, Mr. Falcon's Tribal Gaming License was revoked by the Snoqualmie Gaming Commission on June 2, 2011.

FACTS:

- 1) On May 26, 2011, a Gambling Commission Special Agent (agent) began investigating Mr. Falcon's qualifications to continue holding a license after he reported to Commission licensing staff that he wished to transfer to a house-banked card room after being terminated by Snoqualmie Casino.
- 2) The agent discovered that on December 8, 2010, Mr. Falcon's employment was terminated by Snoqualmie Casino for a criminal violation, specifically theft. The Tribe did not revoke his tribal license, and the investigation was turned over to law enforcement. The agent obtained and reviewed the police report and court records related to Mr. Falcon's criminal charges.
- 3) On February 18, 2011, Mr. Falcon was charged by Information, issued by the King County Prosecutor, with Theft First Degree, a felony. The Information alleges that on December 5, 6, and 7, 2010, Mr. Falcon knowingly stole over \$5,000 in \$500 chips from the Snoqualmie Casino while dealing baccarat.
- 4) On February 18, 2011, a Declaration of Probable Cause was filed with the King County Superior Court. The Declaration of Probable Cause contained the following allegations:
 - a) David Falcon was employed as a card dealer at the Snoqualmie Casino for some months when Casino Security manager Patrick Karr received information that on December 2, 2010, an anonymous caller reported that Mr. Falcon was stealing from the casino.
 - b) Mr. Karr then contacted the Pit Manager, who told Mr. Karr that Mr. Falcon had been requesting to work baccarat tables, and that a particular customer was always at Mr. Falcon's table winning large amounts of money.
 - c) Mr. Karr initiated an investigation, and on December 7, 2010, he and other security employees watched surveillance video of Mr. Falcon working baccarat tables on December 5, 2010, from 20:00 hours to 23:00 hours. A particular individual played at Mr. Falcon's table for the entire three-hour period. During this time, security personnel watched Mr. Falcon reach into his chip rack and pull out a purple \$500 chip with his right hand. Without clearing his hand, Mr. Falcon then reached down and slipped the chip into his shoe. Security observed video showing Mr. Falcon repeating this behavior ten times during the three-hour period.

d) Casino surveillance members conducted a review of all available surveillance footage of Mr. Falcon working. Mr. Falcon committed five more thefts of \$500 chips over three additional days. On each occasion, the identical player was at Mr. Falcon's table, and the floor supervisor was distracted by another task. Casino officials believe the player was signaling Mr. Falcon when the Floor Supervisor was distracted.

e) Mr. Karr and other casino officials questioned Mr. Falcon, after advising him of his Miranda rights. Mr. Falcon waived his rights and admitted to stealing thousands of dollars in \$500 chips over a three-month period. Mr. Falcon confirmed that he was slipping the chips into his shoe and then taking the chips out of the casino building.

f) Mr. Karr contacted the King County Sheriff's Office. After the Sheriff's Office investigated, Mr. Falcon was arrested. Mr. Falcon again waived his Miranda Rights and gave the Sheriff's Office a written confession that he stole thousands of dollars in \$500 chips over a three-month period. Mr. Falcon confirmed that he was slipping the chips into his shoe and taking them out of the casino building. When he was arrested, Mr. Falcon had one \$500 chip in his wallet.

5) On May 26, 2011, an Amended Information was filed in King County Superior Court charging Mr. Falcon with Attempted Theft Second Degree. On that same day, David A. Falcon Jr. was convicted of Attempted Theft in the Second Degree upon entry of a Statement of Defendant on Plea of Guilty.

6) On June 24, 2011, Mr. Falcon was sentenced to one year in jail, with 364 days suspended and credit for one day served, 12 months of probation, a \$500 fine, and 240 hours of community service. Additionally, Mr. Falcon shall not have contact with Snoqualmie Casino.

7) On June 2, 2011, the Snoqualmie Gaming Commission revoked Mr. Falcon's Tribal Gaming License.

VIOLATIONS:

Snoqualmie Tribal/State Compact Section V.C. provides that the State Gaming Agency¹ may revoke, suspend or deny a State certification under the provisions of RCW 9.46.075, and rules promulgated thereunder, for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but shall not be limited to when an applicant or holder of certification or principal of an entity: (The following subsections apply.)

(1) Is determined to be a person who because of prior activities, criminal record, if any, or reputation, habits and associations poses a threat to the effective regulation of gaming or creates or enhances the chances of unfair or illegal practices, methods and activities being used in the conduct of the gaming activities permitted pursuant to this Compact.

¹ Washington State Gambling Commission, as referred to in the Snoqualmie Tribal/State Compact, Section II.

(4) Has had a Tribal or State gaming license revoked or denied during the twelve (12) months prior to the date the Tribe received the application; is currently on probation imposed by any jurisdiction; or has demonstrated a willful disregard or failed to comply with the requirements of any gaming regulatory authority in any jurisdiction, including offenses that could subject the individual or entity to suspension, revocation or forfeiture of any gaming license. For the purpose of reviewing any application for a state certification or for considering the denial, suspension or revocation of any state certification, the State Gaming Agency may consider any prior criminal conduct or current probationary status of the applicant or holder of certification and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases.

RCW 9.46.075 Denial, suspension, or revocation of license, application, or permit

The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein: (The following subsections apply.)

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control.

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

(8) Fails to prove, by clear and convincing evidence, that he is qualified in accordance with the provisions of this chapter.

(10) Having pursued or pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain.

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit

We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization: (The following subsections apply.)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

(5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4).

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as

demonstrated by: (a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations.

RCW 9.46.190 Violations relating to fraud or deceit

Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

(The following subsections apply.)

(1) Employ any device, scheme, or artifice to defraud; or

(3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.02.021.

RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

David A. Falcon Jr. was convicted of Attempted Theft in the Second Degree, after he took over \$5,000 in \$500 chips from the Snoqualmie Casino while he was working at baccarat tables. The charges were based on the licensee/certified employee's conduct occurring in December 2010 while working at baccarat tables. Because of his conviction, Mr. Falcon is currently on probation.

Mr. Falcon, while working as a Class III Employee at Snoqualmie Casino, pursued economic gain in an occupational manner that is in violation of the criminal public policy of this state and there is probable cause to believe that his participation in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity.

Under RCW 9.46.190, the licensee/certified employee, while operating a gambling activity at baccarat tables, employed a scheme and engaged in an act, practice or course of operation as would operate as a fraud or deceit upon Snoqualmie Casino, his employer at the time.

Mr. Falcon's actions and criminal history demonstrate that he is a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities.

The licensee/certified employee has failed to prove by clear and convincing evidence that he is qualified to hold a certification or license, in violation of RCW 9.46.153. Grounds, therefore, exist to revoke David A. Falcon Jr.'s license and certification based on the Snoqualmie Tribal/State Compact Section V.C., RCW 9.46.075(1), (4), (8), and (10), and WAC 230-03-085(1), (5), and (8).

IV.

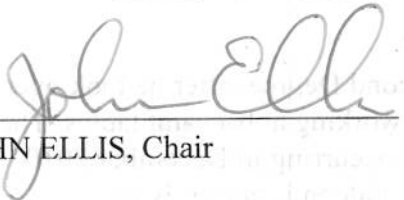
CONCLUSIONS OF LAW

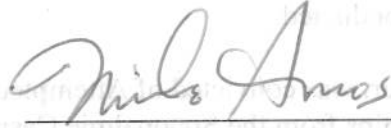
The circumstances specified in the Findings of Facts in section III above constitute grounds for the revocation of David A. Falcon Jr.'s license and certification to conduct gambling activities under the authority of the Snoqualmie Tribal/State Compact, RCW 9.46.075, and WAC 230-03-085.

DECISION AND ORDER

The Washington State Gambling Commission HEREBY ORDERS: David A. Falcon Jr.'s Card Room Employee license and Class III Employee certification to conduct gambling activities is REVOKED.

DATED this 21 day of September, 2011.


JOHN ELLIS, Chair


MIKE AMOS, Vice Chair


KEVEN ROJECKI


MICHAEL REICHERT

NOTICE: RCW 34.05.440(3) provides that within seven (7) days after service of a default order the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

WAC 230-17-040(3) requires that motions be served on the parties listed below:

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